LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 6 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 48

HERBERT HEIDER, Administrator for the Estate of
JAMES D. HEIDER, Deceased,
Petitioner,
vs.
MICHIGAN SUGAR CO., a Michigan Corporation,
Respondent,
and
HERBERT HEIDER, Administrator for the Estate of
DAVID HEIDER, Deceased,
Petitioner,
vs.
MICHIGAN SUGAR CO., a Michigan Corporation,
Respondent.

PETITION FOR REHEARING

GREGORY M. PILLON,
821 Bates Street,
Detroit, Michigan 48226,
Attorney for Petitioner.

Interstate Brief & Record Co., 356 Congress St. E., Detroit, Michigan 48226

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 48

HERBERT HEIDER, Administrator for the Estate of
JAMES D. HEIDER, Deceased,
Petitioner,
vs.
MICHIGAN SUGAR CO., a Michigan Corporation,
Respondent,
and
HERBERT HEIDER, Administrator for the Estate of
DAVID HEIDER, Deceased,
Petitioner,
vs.
MICHIGAN SUGAR CO., a Michigan Corporation,
Respondent.

PETITION FOR REHEARING

Now comes the Petitioner and moves for a rehearing:

That this Court granted a writ of certiorari in this cause. That at that time the respondent did not raise any objections as to the Federal questions being timely raised.

That your petitioner paid $2100.00 to print the record. He then, prepared a brief, a reply brief and argued said cause on December 8, 1966.

That on December 12, 1966 in a *Per Curiam* decision the writ was dismissed as improvidently granted.

Black's Law Dictionary defines "improvidently": "A judgment, decree, rule, injunction etc. when given or rendered without adequate consideration by the court, or without proper information as to all the circumstances affecting it, or based upon a mistaken assumption or misleading information or advice is sometimes said to have been 'improvidently' given or issued."

Your petitioner is perplexed as to what parts of Rule 58 govern this application for rehearing. However, with his application for certiorari, his briefs and argument, your petitioner somehow overlooked the deprivation of one of his fundamental constitutional rights under the 14th Amendment of the United States Constitution, to wit, the right to have a jury determine the factual issues, and now brings this point to the Court's attention to prevent a miscarriage of substantial justice.

The respondent belatedly invoked Michigan P.A. 201 of 1953 claiming that the minors, David Heider, age 8, and James Heider, age 12 were trapping on the respondent's property at the time of their unfortunate deaths.

The Michigan Supreme Court was hopelessly divided on this issue, three justices holding the pleading failed to state a cause of action, three justices holding just the opposite, stating the pleadings do *not* bar the petitioner's cause of action, and two justices who held that the proofs, the trial record, failed to exclude the application of P.A. 201 of 1953, and ordered entry of a judgment of no cause of action.

It is a fundamental rule of law that minors are wards of the courts and as such that pleadings, and even admissions of a parent, guardian or counsel cannot be binding against the minor. See *Burt v. McBain,* 29 Mich. 260; *Cooper v. Mayhew,* 40 Mich. 528; *Power v. Harlow,* 57 Mich. 107.

By not being confronted with P.A. 201 of 1953, in the trial court, the jury in David's case was not allowed to pass upon the fact issue, "was David, age 8, trapping?" was he physically capable of trapping, etc.

In James' case the trial judge, who was the trier of the facts, was never met with the statute so he made no determination of fact if James was trapping at the time of his death.

Why then, should the State Supreme Court, the appellate tribunal, who conducts no trials, but only reviews them, be allowed to substitute its judgment of what the facts are or should be? It is not the trier of the facts.

This clearly violates your petitioner's rights of due process under the 14th Amendment of the United States Constitution to have questions of fact determined in the trial court.

Your petitioner timely raised the Federal questions under the 14th Amendment of the United States Constitution as more particularly set forth in his reply brief (pages 1-10) to that issue as raised by the respondent's brief. Suffice it to say the act complained of is the action of the State Supreme Court itself.

The case of *Saunders v. Shaw,* 244 U.S. 317 (1917) is clearly in point, namely that it is a violation of due process for a State Supreme Court to reverse a case and render judgment absolute against the petitioner, the successful party in the trial court, upon a proposition of fact not determined in the trial court, and further that such an action

by a State Supreme Court need not be anticipated and therefore it is proper to raise the Federal questions thereafter, as your petitioner did in his petition for rehearing in the State Court.

Wherefore, it is respectfully prayed that this Court grant a rehearing or order the causes remanded to the trial court for new trials upon the issues raised by Michigan P.A. 201 of 1953.

Respectfully submitted,

GREGORY M. PILLON,
Attorney for Petitioner,
821 Bates Street,
Detroit, Michigan 48226.

CERTIFICATE OF COUNSEL

I, Gregory M. Pillon, attorney for petitioner named herein do certify that this petition for rehearing is not presented for purposes of delay but is presented in good faith to prevent a miscarriage of justice to the petitioner.

.....

GREGORY M. PILLON,
Attorney for Petitioner.

Dated: January 5, 1967.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

HEIDER, ADMINISTRATOR ETC. *v.* MICHIGAN SUGAR CO.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MICHIGAN.

No. 48. Decided December 12, 1966.

PER CURIAM.

The writ is dismissed as improvidently granted.